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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE SC WORKERS COMPENSATION COMMISSION

Full Commission Order Dated April 28, 2017 Affirming Commissioner Melody L. James
orders dated January 04, 2013 And September 30, 2013

Case No: 2017-0001217

RECEIVED
OCT 16 2017
SC Court of Appeals

John McDaniel, Employee, Claimant, Appellant

v.

Career Employment Professional D/B/A Snelling Staffing, Employer and United Wisconsin
Insurance Co., Carrier, Respondents

MOTION TO STRIKE RESPONDENTS' INITIAL BRIEF
AND DESIGNATION OF MATTER

Pursuant to Rule 208, 209 and 240, SCACR Appellant hereby moves this Court to strike
the Initial Brief of Respondents.

Appellant filed and served his Initial Brief on July 22, 2017. Pursuant to 208(a)2, SCACR,
Respondents' Initial Brief must be filed and served within thirty (30) days of service of Appellant's
Initial Brief. Respondents' Initial Brief was due on or before August 21, 2017. Respondents

allegedly served their Initial Brief on August 30, 2017. Thus, Respondents' Initial Brief is untimely and should be stricken.

The facts of the timeline are straightforward. After the Appellants Initial Brief, Respondents had 30 days to file their Initial Brief. The Respondents served their brief approximately 10 days after it was due, and to date, have not filed a motion to accept their brief late.

Thereafter, the Appellant filed an Initial Reply Brief with the court. The Appellant served his Reply Brief approximately 10 days after it was due. The Appellant has since filed a motion to accept his Reply Brief late.

Both the Respondent and the Appellant missed deadlines as set forth in the SCACR. The Respondents filed a motion to strike the Appellants Reply Brief. This motion to strike the Respondents Initial Brief follows.

Argument

The Appellant feels as if the Respondents have tied his hands, and forced him into filing this motion to strike. The Appellant asserts that the Respondents are in violation of the very rules that they are attempting to cite as authority, to have the Appellant's brief stricken.

According to, www.mgclaw.com (retrieved on October 8, 2017), the Respondents law firm "MGC" has closed over 95,000 cases and they publicly advertise as "a metrics driven law firm built specifically to meet the needs of insurance companies and their customers. From 14 regional offices, we serve clients across the Southwest." The attorneys tab, displays an apparent 169 currently employed attorneys at MGC. The website reveals locations across South Carolina, including; Charleston, Columbia, Greenville, Florence, and Myrtle Beach.

The Appellant has been acting pro se for the last four years. In that time, he was unable to find gainful employment due to his disability and permanent work restrictions arising from the instant case. However, at the time of the accident the Appellant was enrolled in technical college pursuing a civil engineering degree. Due to complications from his injury, the Appellant had to abandon civil engineering as a career path and it was at that time that the pursuit of a law degree became paramount.

Since the Appellant's focus shifted from civil engineering to the law he has; obtained the Dean's list multiple times, was accepted to law school with just an Associate's degree, received a 100% merit-based scholarship to law school, and moved his entire family from South Carolina to Michigan to attend Western Michigan University's Thomas C. Cooley school of law.

The Appellant's current situation was explained fully in both the "Appellants Motion to accept Reply Brief" and the "Response to Respondent's motion to strike."

This motion to strike raises two deficiencies with the Respondents Initial Brief. First, that the Initial Brief was late and should be stricken. Second, that MGC has not served a motion to attempt to remedy the timeliness deficiency of their filing.

Both parties have moved to strike, and the court now must decide between four possible outcomes; 1) grant Respondents motion to strike and deny Appellant's motion to strike, 2) grant both motions to strike, 3) deny both motions to strike, or 4) deny Respondents motion to strike and grant Appellant's motion to strike.

As to the standards of conduct: MGC should be held to the highest standard this court sets forth in the South Carolina Appellate Court Rules. MGC choose to engage in the law as a profession, the voluntary nature of their involvement in this case being to profit from it. The profit

motive is a powerful incentive, and in order to ensure honesty and civility in the judiciary, officers of the court are and should be held to the absolute highest standards.

The Appellant, a layman proceeding pro se, should be held to a reasonable standard. The court should consider the Appellant's physical disability when determining a reasonable standard in this case. The court should also take into consideration the Appellant's status as the primary caregiver for his infant daughter, his status as a full-time student, the mandatory nature of attendance to law school, and the real-world consideration that the Appellant now lives in Michigan, and mail takes a substantial time to travel to Michigan from South Carolina.

Basically, the court finds itself in the position to rule on the case between David and Goliath. In this case, the Appellant relies upon the law instead of a sling, this motion being the proverbial rock.

1) Grant Respondents motion to strike and deny Appellant's motion to strike.

If the court grants the Respondents motion to strike, that ruling would be an explicit statement that a pleading of any party should be stricken for being late, and that the Appellant's reasons for being late were insufficient to overcome the Rules of Court, and that a filing approximately 10 days late is too far outside the realm of reasonableness for the court to protect a pro se Appellant under the circumstances of the current case.

Given the above, it would be inconsistent for the court to then rule that the Appellant's motion to strike the Respondents brief should be denied. The Respondents brief was approximately 10 days late, and (unlike the Appellant) the Respondents have not filed a motion to accept their Initial Brief late, and the court does not afford lawyers the same clemency that is afforded to pro se parties.

If the court rules that the Appellants reasons for filing his Reply Brief late are insufficient and grants the motion from the Respondents to strike, and at the same time denies the Appellants motion to strike the Respondents argument, plead on the same grounds for relief, absent a more compelling reason for filing late than the Appellant presented, that would be a grave miscarriage of justice.

The outcome of this scenario would be the least just of the four. It would encourage other large law firms to break the rules with impunity when dealing with pro se Appellants. If the court allows MGC to violate the Rules of Court, and chooses not to hold them responsible, while at the same time silencing a pro se Appellant that would encourage future bad action by the MGC.

MGC, by not having their actions condemned, would actually be encouraged to engage in the same types of (detrimental to justice) behavior in the future.

This scenario would result in the pro se Appellant being held to the highest standard, and MGC being held to a lower standard. Additionally, this scenario would result in adversarial parties, who acted substantially the same, to be disparately treated by the court, namely although MGC should be held to the highest standard, they would be held to a lower standard, and the Appellant, whom should be held to a reasonable standard would be held to the highest standard. That would be an injustice, and the court must not through word or deed perpetuate injustice.

2) Grant both motions to strike.

At first glance, if both motions were granted, the Respondents would be penalized and the Appellant would be penalized. However, when further scrutinized, this scenario also results in injustice.

If the Respondents motion to strike is granted and the Appellant does not get to reply to the Respondents' argument, then the Appellant is penalized for being 10 days late.

If the Appellant's motion to strike is granted and the Respondents do not get to respond to the Appellants Initial Brief, this would result in the Respondents being penalized for being 10 days late.

Thus, both the Respondents and the Appellant would be penalized by having all pleadings that were filed late stricken.

However, here the court must distinguish between the Respondents and MGC. The Respondents would be indemnified by MGC's malpractice, error and omission insurance.

The Appellant has neither counsel, nor error and omission insurance. The result of this scenario would be that the Appellant would be penalized, MGC would be penalized, and the Respondents would be indemnified from loss.

Thus, this scenario must also be rejected by the court as it would result in only one of the parties (the Appellant) being penalized, even though they acted in substantially the same manner. Of note, this scenario would hold both parties to the highest standards, and this is unfair as the Appellant is not a professional and should only be held to a reasonable standard.

3) Deny both motions to strike.

An argument could be made that justice would be served by denying both motions to strike. However, an in-depth analysis once again shows this outcome to be unjust.

The facts are straightforward, Respondents turned their brief in 10 days late, and then the Appellant turned his brief in 10 days late. The Appellant is acting pro se, and Respondents have 169 named attorneys working for them as well as numerous support staff. This is the Appellants

first case, while the Respondents have closed over 95,000 according to their website. The Appellant currently resides in Michigan, mail can take four or five days to travel between South Carolina and Michigan, and the Respondents have an office building merely blocks from the courthouse, with staff available to hand-deliver pleadings to the court within minutes of them being drafted. The Appellant is acting pro se, and the court should consider that when considering leniency to the Rules of Court, but, the Respondents are licensed members of the bar and must be held to the highest standards. The Respondents filed their brief late, and then motioned for the court to silence the Appellant for the same violation that they had just committed.

Implicit in the denial of the Respondent's motion, would be the ruling that the Appellants reasons for filing late were sufficient to allow his entire argument to be heard.

To date MGC has not put forth a motion to admit their brief late. If the court rules that MGC's reason for filing late was sufficient to explain noncompliance with the Rules of Court, then the Respondents won't be held responsible for noncompliance. However, if the Respondents cannot show good cause for violating the Rules of Court than the Appellant's motion must be granted.

This scenario incentivizes the Respondents to continue implementing similar strategies in the future. The cost benefit analysis would show that if MGC was not penalized for moving the court to strike the Appellant's brief, while concurrently in violation of the Rules of Court, they would in the future continue to violate the Rules of Court while abusing the process to silence pro se litigants.

This scenario would be equal to a tacit endorsement of MGC's actions by this fair court, and for that reason alone, the court should find this scenario unjust and non-tenable. The court must rebuke the actions of bad actors to keep the integrity of the law profession intact.

This scenario could result in a just outcome if MGC were to show good cause for the filing being late, and explain to this court why it would be just for the Appellant to be silenced while MGC openly violates the Rules of Court.

This scenario becomes troublesome when considering the standards of conduct between MGC and the Appellant. This scenario would end up holding both the Appellant and MGC to a reasonable standard. In failing to hold the Respondents counsel to the highest professional standards this court would invite further deviance from MGC, as well as defense firms large and small. The court must prevent the Respondents counsel from running roughshod.

Absent good cause, the actions of MGC should be condemned, which leads us to the only possible just outcome, as explained below.

4) Grant the Appellants motion to strike and deny the Respondents motion to strike.

After careful consideration, justice can only be served by granting the Appellant's motion to strike and denying the Respondents motion to strike.

This scenario is the only one that holds both parties to the appropriate standards, requiring MGC to be held to the highest professional standards while simultaneously allowing the Appellant to be held to a reasonable standard.

The South Carolina Constitution along with the Administrative Procedures Act guaranteed the Appellant the right to judicial review of an administrative agency decision. This judicial review is the only mechanism or avenue available to ensure a fair, just, and a consistent workers compensation schema.

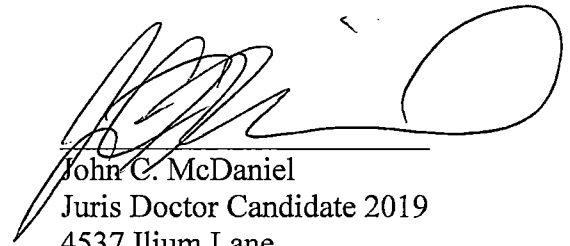
This scenario would allow for the Appellant to be given his constitutional right to be heard, the Respondents would be indemnified from the actions of their counsel, and the actions of the MGC would be condemned by this court.

MGC is a member of the bar and the required error and omission insurance would indemnify the Respondents from any damages incurred when their counsel failed to abide by the Rules of Court.

The actions of MGC should be condemned, and the court could effectuate that condemnation by granting the Appellant's Motion to Strike Respondents' Initial Brief. The benefits here would be multiple, as MGC would not only be specifically deterred from future violations of the Rules of Court, but defense firms across the Southeast would be generally deterred from repeating MGC's actions in the future.

In Conclusion, Appellant respectfully request that this Court Strike Respondents' Initial Brief. In addition, the Appellant would request service of the record on appeal be delayed until resolution of the motions currently before the court.

October 11, 2017



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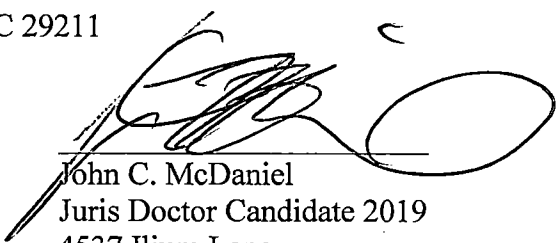
PROOF OF SERVICE

I certify that I have served Appellant's Motion to Strike by depositing in the U.S. Mail, postage
paid on October 11, 2017 addressed to the below:

Helen F. Hiser
R. Mark Davis
McAngus, Goudelock & Courie, LLC
735 Johnnie Dodds Blvd., Suite 200
Mount Pleasant, SC 29465

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RE: John C. McDaniel v. Career Employment Professional d/b/a Snelling Staffing
DOI: 11/21/2011
WCC File: 1116275
Appellant Case No: 2017-001217

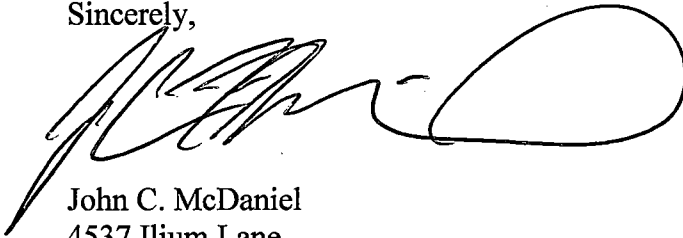
Dear Ms. Kitchings,

Enclosed for filing, please find Appellant's Motion to Strike, Proof of Service and the \$25.00 filing fee for same. At your earliest conveniences please file the original.

By copy of this letter, I am serving counsel of record with same.

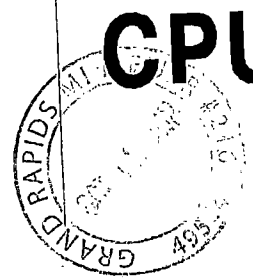
Please call me if you have any questions about the enclosed. Thank you for your time.

Sincerely,



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